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SELECTED UPDATE ON TAX INFORMATION EXCHANGE AGREEMENTS IN LATINA AMERICA

Erika G. Litvak¹

I. INTRODUCTION

IN 1597, Francis Bacon wrote that “knowledge is power.”² The Internal Revenue Service (IRS) could not agree more with that statement after 2009. After a successful Voluntary Compliance Initiative for undisclosed foreign accounts that started on March 23, 2009³ and ended on October 15, 2009 (after an extended deadline from its original due date on September 23, 2009⁴), the IRS is obtaining a significant amount of information from the more than 14,700 taxpayers⁵ that chose to come forward before the situation would become more dire.⁶ The amount of information that the IRS is acquiring through the first famous thirty questions,⁷ in-person interviews, and the later optional letter,⁸ is allowing the IRS to obtain in-depth knowledge of the methods used by taxpayers and financial advisors during the past years to conceal offshore assets and income. With that knowledge, the IRS becomes quite powerful.

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1. The author is an associate with the law firm of Greenberg Traurig, P.A. The views expressed herein are solely those of the author and should not be attributed to the author's firm or its clients.
 2. FRANCIS BACON, *RELIGIOUS MEDITATIONS, OF HERESIES* (1597).
 3. Memorandum from Linda Stiff, Deputy Commissioner for Services and Enforcement, Small Business/Self-Employed Division, to Commissioner, Large and Mid-Size Business Division (LMSB) (Mar. 23, 2009). The initiative required taxpayers to pay all applicable taxes and interest due going back six years and file or amend all returns, including information returns (such as IRS Forms 5471, 5472, 3520, etc.) and FBARs. Taxpayers enrolling in the program would be subject to a twenty percent accuracy-related or delinquency penalty for all years covered by the voluntary disclosure (no reasonable cause exception would be applicable) and a penalty equal to twenty percent of the amount in foreign back accounts/entities in the year with the highest aggregate account/asset value. The program provided for a five percent penalty for taxpayers that fulfilled certain conditions.
 4. On September 21, 2009, the IRS extended the original deadline to October 15, 2009 via IR-2009-84.
 5. See IR-2009-116.
 6. Doug Shulman, IRS Commissioner, Prepared Testimony Before House Ways and Means Subcommittee on Select Revenue Measures 5-6 (Mar. 31, 2009).
 7. Laura Saunders, *IRS Gets Tougher on Offshore Tax Evaders*, WALL STREET JOURNAL, July 20, 2009, <http://online.wsj.com/article/SB124804796387763807.html?mod=wsjcrmain#QUESTIONS>.
 8. *Offshore Voluntary Disclosures—Optional Format*, IRS, July 28, 2009, <http://www.irs.gov/pub/foia/ig/ci/ltr-voluntary-disclosure-option-format-20090729.doc>.

In addition to the continuous pressure by the IRS, the U.S. Department of Justice, members of Congress via numerous comments in the press, new bills such as the Foreign Tax Compliance Act of 2009 (to mention only some of the efforts that the United States is pursuing),⁹ the Organization for Economic Cooperation and Development (OECD) released its Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard (OECD Progress Report) on April 2, 2009.¹⁰ The OECD Progress Report listed three groups of jurisdictions: (1) jurisdictions that have substantially implemented the internationally agreed tax standard; (2) jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented; and (3) jurisdictions that have not committed to the internationally agreed tax standard.

“The internationally agreed tax standard, which was developed by the OECD in co-operation with non-OECD countries and which was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes.¹¹ It also provides for extensive safeguards to protect the confidentiality of the information exchanged.”¹²

A handful of countries from Latin America were included in the Progress Report. The first group included Argentina and Mexico; the second group included Panama, Chile, and Guatemala; and the third group included Costa Rica and Uruguay.¹³ This created a significant pressure on the different countries to enhance their commitment to tax information exchange to achieve a better classification.

In order to be considered a jurisdiction that has substantially complied with the internationally agreed tax standard a country has to have signed at least twelve tax information agreements that meet OECD standards.¹⁴ This prompted many countries to enter into and/or ratify tax information exchange agreements (TIEAs) and to amend existing domestic laws that prevented them from disclosing tax, financial, and/or banking information to their internal revenue service or their counterparties.

The OECD has updated the OECD Progress Report several times during 2009 in order to reflect the latest commitments to the internationally

9. H.R. 3933, 111th Cong. (2009); S. 1934, 111th Cong. (2009).

10. OECD, *Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard*, Apr. 2, 2009, <http://www.oecd.org/dataoecd/38/14/42497950.pdf> [hereinafter OECD, *Progress Report*, Apr. 2, 2009].

11. *Id.* at n. 1.

12. *Id.*

13. *Id.*

14. OECD, Frequently Asked Questions, http://www.oecd.org/document/50/0,3343,en_21571361_43854757_44234930_1_1_1_1,00.html#whatisthebasis.

agreed tax standard by different jurisdictions.¹⁵ Interestingly, as of the date of the publication of this article, there are no jurisdictions listed on the third group anymore. Costa Rica and Uruguay were upgraded to the “grey” list¹⁶ (group two) and Chile was upgraded to the first group.¹⁷

In view of the intense activity that took place during 2009 in the area of exchange of information and international assistance, it is worth looking at the commitments and related efforts made by Latin American countries during the year. This article contains a review of selected recent activity by Latin American countries with respect to commitments to tax information exchange or similar measures aimed at facilitating the flow of tax information among treaty partners.

II. ARGENTINA

The OECD Progress Report listed Argentina as a jurisdiction that substantially implemented the internationally agreed tax standard.¹⁸ Nonetheless, Argentinean tax officials have been very active during 2009 and have expressed their expectations to enter into several new TIEAs during the year.¹⁹ Even though Argentina entered into new TIEAs during 2009, it did not manage to complete the long list of expected deals.²⁰

During 2009, Argentina entered into TIEAs with Andorra, Bahamas, Costa Rica, Monaco, and San Marino.²¹ These agreements are new additions to the list of those already signed by Argentina (Argentina already

15. OECD, Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standards (Dec. 23, 2009), <http://www.oecd.org/dataoecd/50/0/43606256.pdf> [hereinafter OECD, *Progress Report*, Dec. 23, 2009]. The OECD's website informs that the tables will be updated as new agreements meeting the internationally agreed tax standard are signed. Jurisdictions that have committed to the internationally agreed standard but have not yet substantially implemented it will be identified as having substantially implemented it once they sign twelve agreements that meet the standard. See OECD, Frequently Asked Questions, *supra* note 14.

16. OECD, Progress Report, Dec. 23, 2009, *supra* note 15; OECD, Costa Rica Makes Progress in International Tax Co-Operation, Signs TIEA with Argentina (Nov. 25, 2009), http://www.oecd.org/document/6/0,3343,en_2649_33767_44138630_1_1_1_1,00.html; OECD, OECD welcomes Uruguay's commitment to OECD tax information exchange standards (Apr. 3, 2009), http://www.oecd.org/document/25/0,3343,en_2649_33767_42509273_1_1_1_1,00.html.

17. OECD, Progress Report, Dec. 23, 2009, *supra* note 15; OECD, Chile Enacts Law on Access to Bank Information, Implements Tax Standard (Dec. 14, 2009), http://www.oecd.org/document/50/0,3343,en_2649_33767_44262898_1_1_1_1,00.html.

18. OECD, *Progress Report*, Apr. 2, 2009, *supra* note 10.

19. David Haskel, *Argentina Announces Signing of TIEA with Monaco, Says Several Others Planned*, Oct. 21 Daily Tax Report 201 DTR I-7 (2009) [hereinafter Haskel, *Argentina Announces Signing*]; see also David Haskel, *Argentina Inks TIEA with Andorra, Says Several Others in the Pipeline*, Oct. 27 Daily Tax Report 205 DTR I-4; David Haskel, *Argentina Adds a Dozen New TIEAs to List for 2010, Exceeding OECD, G-20 Standards*, Nov. 23 Daily Tax Report 223 DTR I-1 [hereinafter Haskel, *Argentina Adds a Dozen*].

20. Haskel, *Argentina Adds a Dozen*, *supra* note 19 at 223 DTR I-1; see also David Haskel, *Argentina Signs Tax Information Exchange Deal with San Marino*, Dec. 14 Daily Tax Report 237 DTR I-1 [hereinafter Haskel, *Argentina Signs Tax*].

21. Haskel, *Argentina Signs Tax*, *supra* note 20, at 237 DTR I-1.

signed TIEAs with Brazil, Chile, Peru, and Spain)²². The country is hoping for a productive 2010 as it is looking to enter into similar agreements with Armenia, Aruba, Azerbaijan, Barbados, Cayman Islands, Colombia, France, Gibraltar, Guernsey, Jersey, Kazakhstan, Luxembourg, Macao, Malaysia, Malta, Netherlands Antilles, Turkmenistan, Ukraine, and Uzbekistan²³.

The agreement with Monaco was signed on October 16, 2009,²⁴ and it provides the contracting parties with access to information on banking and financial operations by individuals, agencies, and companies and the ability to do inspections abroad.²⁵

The TIEA with Andorra was signed on October 26, 2009.²⁶ According to Article 1 of the TIEA, the information that will be shared by the contracting parties is that which is potentially relevant for the assessment, computation, and collection of the taxes covered by the TIEA and the collection and execution of taxes, or the investigation or prosecution of tax cases²⁷. The taxes covered by the agreement are: Real Estate Transfer taxes, Capital Gains taxes and direct taxes enacted by Andorran laws (with respect to Andorran taxes) and Income tax, Value Added Tax (VAT), Personal Asset Tax and Tax on Presumptive Minimum Income (with respect to Argentinean taxes)²⁸.

The TIEA with Costa Rica was signed on November 23, 2009.²⁹ Article 1 of the TIEA provides for all methods of information exchange: general information on types of economic activities, simultaneous audits, audits abroad in order to prevent fraud, evasion, tax avoidance, or any other type of tax offense and to establish better sources of information that are relevant to the tax administration.³⁰ The taxes covered by the agreement are: Income Tax, VAT, Personal Asset Tax, Tax on Presumptive Minimum Income and Internal Taxes (with respect to Argentinean taxes), Direct and Indirect taxes and any other tax that is collected by the Central Government (with respect to Costa Rican taxes), but the agreement does not apply to state or municipal taxes.³¹

The TIEA with the Bahamas was signed on December 3, 2009,³² and

22. Haskel, *Argentina Announces Signing*, *supra* note 19, at 201 DTR I-7; *see also* David Haskel, *Argentina, Bahamas Sign Tax Information Exchange Deal*, Dec. 7 Daily Tax Report DTR I-1 (2009); Haskel, *Argentina Signs Tax*, *supra* note 20, at 237 DTR I-1.

23. Haskel, *Argentina Signs Tax*, *supra* note 20, at 237 DTR I-1.

24. Haskel, *Argentina Announces Signing*, *supra* note 19, at 201 DTR I07.

25. *Id.*

26. Agreement for the Exchange of Tax Information between the Government of Andorra and the Government of Argentina, Andorra-Arg., Oct. 26, 2009.

27. *Id.* art. 1.

28. *Id.* art. 3.

29. Agreement for the Exchange of Tax Information between the Republic of Argentina and the Republic of Costa Rica, Arg.-Costa Rica, Nov. 23, 2009.

30. *Id.* art. 1.

31. Agreement for the Exchange of Tax Information between the Republic of Argentina and the Republic of Costa Rica art. 2, Nov. 23, 2009.

32. Agreement between the Commonwealth of Bahamas and the Argentine Republic for the Exchange of Information on Tax Matters, Dec. 3, 2009.

covers simultaneous exchange of information, information on demand, industry-wide examinations and tax inspections abroad³³. According to its Article 1, the contracting parties will share information that is potentially relevant to the administration and enforcement of the domestic laws of the contracting parties concerning the taxes covered by the TIEA.³⁴ The taxes covered by the TIEA are: taxes of every kind and description (with respect to Bahamian taxes) and Income tax, VAT, Personal Asset Tax and Tax on Presumptive Minimum Income (with respect to Argentinean taxes)³⁵.

The agreement with San Marino was signed on December 7, 2009³⁶ and covers simultaneous exchange of information, information on demand, industry-wide examinations and tax inspections abroad³⁷.

Much has been discussed about the possibility of an agreement with Uruguay, but there is no clear indication that an agreement is in the horizon. Argentine tax officials have expressed their interest in reaching an agreement with Uruguay, which is not surprising given the appeal that Uruguay has among Argentines due to its bank secrecy laws, but there is no indication of Uruguay's interest in entering into an agreement with Argentina³⁸.

III. BRAZIL

During 2009, Brazil approved the income tax treaty with Peru which was executed on February 17, 2006.³⁹ In order to enter into force, the agreement required each party to follow its internal ratification procedures and that meant,⁴⁰ in the case of Brazil, the approval by the Brazilian Congress and the President. On August 11, 2009, the Brazilian Congress approved the text of the treaty.⁴¹ President Lula promulgated

33. David Haskell, Argentina, *Bahamas Sign Tax Information Exchange Deal*, DAILY TAX REPORT, Dec. 7, 2009, at 232 DTR I-1.

34. Agreement between the Commonwealth of Bahamas and the Argentine Republic for the Exchange of Information on Tax Matters art. 1, Dec. 3, 2009.

35. Agreement between the Commonwealth of Bahamas and the Argentine Republic for the Exchange of Information on Tax Matters art. 3, Dec. 3, 2009.

36. David Haskell, *Argentina Signs Tax Information Exchange Deal with San Marino*, DAILY TAX REPORT, Dec. 14, 2009, at 237 DTR I-1. See also Iurie Lungu, *Argentina, San Marino Sign Tax Information Exchange Agreement*, Dec. 8, 2009, at 2009 WTD 233-10.

37. David Haskell, *Argentina Signs Tax Information Exchange Deal with San Marino*, DAILY TAX REPORT, Dec. 14, 2009, at 237 DTR I-1.

38. David Haskell, *Argentina, Bahamas Sign Tax Information Exchange Deal*, Daily Tax Report, Dec. 7, 2009, at 232 DTR I-1; *Argentine Rulings Ban Stocks, Bonds Related to Nations Lacking Tax Treaties*, DAILY TAX REPORT, May 15, 2009, at 92 DTR I-4.

39. Convention between the government of the Republic of Peru and the Government of the Republic of Brazil to Eliminate Double Taxation and to Prevent Tax Evasion with Respect to Income Tax, Feb. 17, 2006.

40. Convention between the government of the Republic of Peru and the Government of the Republic of Brazil to Eliminate Double Taxation and to Prevent Tax Evasion with Respect to Income Tax art. 28, Feb. 17, 2006.

41. David Roberto R. Soares da Silva, *Brazilian Congress Approves Treaty with Peru*, Aug. 14, 2009, at 2009 WTD 155-10.

the treaty on November 30, 2009.⁴² Therefore, the treaty is now in force and became effective January 1, 2010.⁴³ Article 25 of the treaty contains an exchange of information clause. Interestingly, Paragraph 2 of Article 25 provides for the exchange of information regarding ownership in companies and it expressly prescribes that the competent authority shall obtain and provide information with respect to bearer shares.⁴⁴

In addition, on October 28, 2009, the Brazilian Chamber of Deputies' Commission of Constitution and Justice approved the TIEA signed with the United States and allowed it to move forward in the ratification process required by Brazilian law.⁴⁵ Brazil signed a TIEA with the United States on March 20, 2007, but the agreement has not entered into force yet⁴⁶ given that it has to be ratified by each of the contracting parties through their domestic ratification procedures. Brazil's Congress (House and Senate) and the President must approve the treaty, but at least the approval by the Chambers of Deputies' Commission of Constitution and Justice will allow this to be reviewed by Congress, so it is a major step after the two years that passed since the treaty was signed.⁴⁷

The taxes covered by the TIEA with the United States are: (a) with respect to U.S. taxes: Income Tax, Self-Employment Tax, Estate and Gift Taxes and Excise Taxes (but solely those of Federal nature);⁴⁸ (b) with respect to Brazilian taxes: Individual and Corporate income tax, industrialized and Corporate Tax, industrialized products tax, financial transactions tax, rural property tax, Program for Social Integration contribution (PIS), Social Contribution for the Financing of Social Security (COFINS) and Contribution for the Financing of Social Security.⁴⁹

IV. CHILE

Chile was initially listed as a "grey" jurisdiction by the OECD Progress Report.⁵⁰ On December 14, 2009, however, Chile was upgraded to the group of jurisdictions that substantially implemented the internationally

42. David Roberto R. Soares da Silva, *Brazil-Peru Tax Treaty Enters into Force*, Dec. 2, 2009, at 2009 WTD 229-10.

43. Gustavo Lopez-Ameri, *Peru: 2009 Year in Review*, 2009 WTD 245-17 (Dec. 24, 2009).

44. Convention between the government of the Republic of Peru and the Government of the Republic of Brazil to Eliminate Double Taxation and to Prevent Tax Evasion with Respect to Income Tax art. 25 para 2, Feb. 17, 2006.

45. David Roberto R. Soares da Silva, *Brazilian Parliamentary Commission Approves TIEA With U.S.*, 2009 WTD 211-2 (2009).

46. John Venuti et. al., *Current Status of U.S. Tax Treaties and International Tax Agreements*, 39 TM INT'L J. 33.

47. David Roberto R. Soares da Silva, *Brazilian Parliamentary Commission Approves TIEA With U.S.*, 2009 WTD 211-2 (Nov. 4, 2009).

48. *Id.*

49. *Id.*

50. OECD, *Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard*, Apr. 2, 2009, available at <http://www.oecd.org/dataoecd/38/14/42497950.pdf>.

agreed tax standard.⁵¹ The following day, on December 15, the OECD invited Chile to become a member of the OECD.⁵² The reason for these changes is the passing of a piece of new domestic legislation amending Article 62 of Chile's Tax Code which prohibited the Chilean Tax Service to obtain and share bank information in non-criminal cases.⁵³ The prior version of Article 62 banned the Chilean Tax Service from obtaining bank data from individuals and prevented them from sharing such information under existing tax treaties in place⁵⁴.

Chile has entered into more than twenty tax treaties with exchange of information provisions, but this limitation imposed by its domestic law hindered the effectiveness of those tax information mechanisms.⁵⁵ The new law removes the existing prohibition, thereby allowing the exchange of such information even though it also establishes procedures to safeguard the privacy of taxpayers and to prevent abuse by tax authorities.⁵⁶ The new law's effective date is January 1, 2010.⁵⁷

In terms on new treaties, new tax treaties with Ireland, Malaysia, Paraguay, and Portugal entered into force on January 1, 2009.⁵⁸ Also, in July 2009, the Chilean Congress ratified the tax treaty with Colombia⁵⁹ that was signed on April 19, 2007.⁶⁰ Article 26 of the treaty contains an exchange of information provision that follows the OECD's model treaty.⁶¹ The treaty is not in force yet.⁶² It will be effective when the contracting parties complete their internal procedures of approval and ratification of

51. OECD, *Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard*, Dec. 23, 2009, available at <http://www.oecd.org/dataoecd/50/0/43606256.pdf>.

52. OECD, *Chile invited to become a member of the OECD*, Dec. 15, 2009, available at http://www.oecd.org/document/28/0,3343,en_2649_201185_44267356_1_1_1_1,00.html.

53. Tom Azzopardi, *Chile Publishes Bank Secrecy Law, Clearing Path to OECD Membership*, DAILY TAX REPORT, Dec. 16, 2009, at 239 DTR I-6.

54. Tom Azzopardi, *Chile Strengthens Powers to Access Bank Data, Exchange Tax Information*, DAILY TAX REPORT, Nov. 2, 2009, at 209 DTR I-1.

55. OECD, *Chile enacts law on access to bank information, implements tax standard*, Dec. 14, 2009, at http://www.oecd.org/document/50/0,3343,en_2649_33767_44262898_1_1_1_1,00.html.

56. Tom Azzopardi, *Chile Strengthens Powers to Access Bank Data, Exchange Tax Information*, DAILY TAX REPORT, Nov. 2, 2009, at 209 DTR I-1.

57. OECD, *Chile enacts law on access to bank information, implements tax standard*, Dec. 14, 2009, available at http://www.oecd.org/document/50/0,3343,en_2649_33767_44262898_1_1_1_1,00.html.

58. ANTHONY COOK, CHILE: 2009 YEAR IN REVIEW, 2009 WTD 244-9 (Dec. 23, 2009).

59. Iurie Lungu, *Chile Ratifies Tax Treaty with Colombia*, July 27, 2009, at 2009 WTD 141-10.

60. Convention between the Republic of Chile and the Republic of Colombia to Avoid Double Taxation and Prevent Tax Evasion with Respect to Income Tax and Wealth Tax, Apr. 19, 2007.

61. Convention between the Republic of Chile and the Republic of Colombia to Avoid Double Taxation and Prevent Tax Evasion with Respect to Income Tax and Wealth Tax, April 19, 2007, Article 26.

62. Iurie Lungu, *Chile Ratifies Tax Treaty with Colombia*, 2009 WTD 141-10, July 27, 2009.

the treaty and notify each other pursuant to Article 30 of the treaty.⁶³

V. COLOMBIA

During 2009, the Colombian Constitutional Court reviewed and declared the text of the tax treaty with Chile to conform to constitutional standards, and therefore it is anticipated that the treaty will enter into force during 2010⁶⁴. In addition, the Court is undertaking review of the tax treaty with Switzerland, which was approved by the Colombian Congress on July 31st.⁶⁵ The tax treaty with Mexico, which was signed on August 13th,⁶⁶ is pending Congressional and judicial review as well as the tax treaty with Canada.⁶⁷

VI. COSTA RICA

The initial OECD Progress Report listed Costa Rica as a jurisdiction that did not commit to the international agreed tax standard.⁶⁸ Nonetheless, Costa Rica managed to move to the grey list⁶⁹ by entering into its first TIEA with Argentina on November 23, 2009.⁷⁰ We have already discussed the details of the terms of the agreement with Argentina above in the update on Argentina. The upgrade by the OECD was due to Costa Rica's commitment to adhere to the international agreed tax standards.⁷¹

Costa Rica's Minister of Finance has expressed his intention to sign similar agreements with Mexico, France, Holland, Switzerland, Germany, Brazil, Canada, Chile, and Colombia, among other nations.⁷² Costa Rica

63. Convention between the Republic of Chile and the Republic of Colombia to Avoid Double Taxation and Prevent Tax Evasion with Respect to Income Tax and Wealth Tax art. 30, Apr. 19, 2007.

64. Mario Andrade, *World Tax Advisor*, Dec. 18, 2009, available at http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Newsletters/dtt_tax_worldtaxadvisor_091218.pdf.

65. Iurie Lungu, *Colombia Ratifies Tax Treaty With Switzerland*, 2009 WTD 152-10, Aug. 11, 2009.

66. Iurie Lungu, *Colombia Mexico Sign Tax Treaty*, 2009 WTD 156-10, Aug. 17, 2009.

67. Mario Andrade, *World Tax Advisor*, December 18, 2009, available at http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Newsletters/dtt_tax_worldtaxadvisor_091218.pdf.

68. OECD, *Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard*, April 2, 2009, at <http://www.oecd.org/dataoecd/38/14/42497950.pdf>.

69. OECD, *Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard*, December 23, 2009, at <http://www.oecd.org/dataoecd/50/0/43606256.pdf> and OECD, *Costa Rica Makes Progress in International Tax Cooperation, Signs TIEA with Argentina*, November 25, 2009, at http://www.oecd.org/document/6/0,3343,en_2649_33767_44138630_1_1_1_1,00.html.

70. Agreement for the Exchange of Tax Information by and between the Republic of Argentina and the Republic of Costa Rica, Nov. 23, 2009.

71. OECD, *Costa Rica Makes Progress in International Tax Cooperation, Signs TIEA with Argentina*, Nov. 25, 2009, available at http://www.oecd.org/document/6/0,3343,en_2649_33767_44138630_1_1_1_1,00.html.

72. OECD, *Costa Rica Makes Progress in International Tax Cooperation, Signs TIEA with Argentina*, November 25, 2009, at http://www.oecd.org/document/6/0,3343,en_2649_33767_44138630_1_1_1_1,00.html.

has already a TIEA in place with the United States that entered into force on February 12, 1991.⁷³

VII. MEXICO

On February 9, 2009, Agustin Carstens, Secretary of Finance of the Mexican Ministry of Finance sent a request to U.S. Secretary of the Treasury Timothy Geithner to expand the information exchanged between Mexico and the United States under the current treaty.⁷⁴ Currently, Mexico and the United States exchange information under the treaty on a case-by-case basis and also exchange information regarding bulk information on interest paid between corporations, dividends and royalties, but they do not exchange information regarding interest paid by banks from one country to the residents of the other country.⁷⁵ Canada and the United States have started to share such information. Mexico also intends to exchange the same information under the Mexico-U.S. treaty—given that such information would provide Mexico with a tool to detect, prevent, and combat tax evasion, money laundering, terrorist financing, drug trafficking and organized crime.⁷⁶

In terms of treaties, on April 23, 2009, Mexico and the United Kingdom signed a new protocol to the tax treaty signed between the two nations on June 2, 1994, which among other changes, replaces the old Article 27 (which contains the exchange of information clause) with a new and expanded version that follows Article 26 of the OECD model convention.⁷⁷

It is worth noting that Mexico hosted on September 1 and 2, 2009, the 5th Global Forum on Transparency and Exchange of Information which discussed the next steps in a global campaign to improve transparency and exchange of banking, ownership, and other information for tax purposes.⁷⁸

Also on September 1, Mexico entered into a TIEA with the Netherlands Antilles,⁷⁹ which contemplates the exchange of information that is “foreseeably relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, or the investigation or

73. John Venuti et. al., *Current Status of U.S. Tax Treaties and International Tax Agreements*, 39 TM Int'l J. 33.

74. Agustin Carstens, *Letter to the Honorable Timothy Geithner*, 2009 WTD 51-15, Feb. 9, 2009.

75. *Id.*

76. *Id.*

77. Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United Mexican States to Amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at Mexico City on 2 June 1994, at 2009 WTD 93-16.

78. OECD, 5th Global Forum on Transparency and Exchange of Information, Mexico City, Mex., Sept. 1-2, 2009, *available at* www.oecd.org/tax/globalforum/mexico.

79. Agreement between the Kingdom of the Netherlands in respect of the Netherlands Antilles and the United Mexican States for the Exchange of Information on Tax Matters, Sept. 1, 2009.

prosecution of tax matters.”⁸⁰ The taxes covered by the agreement are: (i) with respect to Netherlands Antilles taxes: income tax, wages tax, profit tax, surtaxes on the income and profit tax and the tax on turnover of businesses; and (ii) with respect to Mexican taxes: income tax, business flat rate tax, and value added tax.⁸¹ The agreement is not yet in force. It will be in force once the contracting parties complete their internal procedures of approvals and ratifications and notify each other pursuant to Article 12 of the agreement.⁸²

On September 18, 2009,⁸³ Mexico and Switzerland signed a protocol to amend the tax treaty entered into between the parties on August 3, 1993,⁸⁴ in order to adopt, among other measures, an exchange of information clause that follows Article 26 of the OECD’s Model Convention.⁸⁵ The protocol has not entered into force yet given that each contracting party must follow its domestic procedures for approval and ratification of the protocol and notification to each other upon completion of same.⁸⁶

In addition, on September 29, 2009, Mexico and Singapore amended the tax treaty signed between the parties on November 9, 1994, through a protocol that solely amended the exchange of information clause of the existing treaty.⁸⁷ The protocol replaces the then Article 26 of the treaty with a new text that follows the OECD’s model convention Article 26.⁸⁸ The protocol will enter into force once the parties completed their internal procedures for approval and ratification and notified each other pur-

80. Agreement between the Kingdom of the Netherlands in respect of the Netherlands Antilles and the United Mexican States for the Exchange of Information on Tax Matters art. 1, Sept. 1, 2009.

81. Agreement between the Kingdom of the Netherlands in respect of the Netherlands Antilles and the United Mexican States for the Exchange of Information on Tax Matters, September 1, 2009, Article 4.

82. Agreement between the Kingdom of the Netherlands in respect of the Netherlands Antilles and the United Mexican States for the Exchange of Information on Tax Matters, September 1, 2009, Article 12.

83. Swiss Federal Department of Finance, *Switzerland and Mexico Sign Revised Double Taxation Agreement*, 2009 WTD 181-20 (Sept. 21, 2009).

84. Protocol Amending the Convention Between the Swiss Federal Council and the Government of the United Mexican States for the Avoidance of double Taxation with Respect to Taxes on Income, Mexico City, Mex., signed on August 3, 1993, 2009 WTD 181-18 (Sept. 18, 2009).

85. Swiss Federal Department of Finance, *Switzerland and Mexico Sign Revised Double Taxation Agreement*, September 21, 2009, at

86. Protocol Amending the Convention Between the Swiss Federal Council and the Government of the United Mexican States for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Mexico City on August 3, 1993, September 18, 2009, Article XIV, at 2009 WTD 181-18.

87. Protocol Amending the Agreement Between the Republic of Singapore and the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, September 29, 2009, at 2009 WTD 188-18.

88. Protocol Amending the Agreement Between the Republic of Singapore and the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, September 29, 2009, Article I at 2009 WTD 188-18.

suant to Article II of the protocol.⁸⁹

On October 15, 2009, Mexico entered into a TIEA with Bermuda, which provides for the exchange of information that is relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.⁹⁰ On October 15, 2009, Mexico entered into a TIEA with Bermuda, which provides for the exchange of information that is relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.⁹¹ The taxes covered by the convention are taxes of every kind and description in both contracting parties, including those that may be imposed after the date of signature of the convention, but the convention does not cover state or municipal taxes.⁹² The agreement is not yet in force and will become effective once the contracting parties complete their internal ratification procedures and each party is notified accordingly.⁹³

In addition, on the same day, the income tax treaty signed with Germany on July 9, 2008, entered into force.⁹⁴ The treaty contains a tax information exchange clause that follows the OECD's model convention, but also provides for additional information gathering tools.⁹⁵

These agreements are new additions to the TIEAs already in force in Mexico. Mexico has a TIEA with the United States that entered into force on January 18, 1990.⁹⁶

VIII. PANAMA

Panama was listed as a "grey" jurisdiction on the OECD's Progress Report for having committed but not yet substantially implemented the internationally agreed tax standard.⁹⁷ There has been considerable amount of pressure from the OECD and the United States on Panama to

89. Protocol Amending the Agreement Between the Republic of Singapore and the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, September 29, 2009, at 2009 WTD 188-18.

90. Agreement Between the Government of Bermuda and the Government of the United Mexican States on the Exchange of Tax Information art. 1, Oct. 1, 2009.

91. Agreement Between the Government of Bermuda and the Government of the United Mexican States on the Exchange of Tax Information art. 1, Oct. 1, 2009.

92. Agreement Between the Government of Bermuda and the Government of the United Mexican States on the Exchange of Tax Information art. 4, Oct. 1, 2009.

93. Agreement Between the Government of Bermuda and the Government of the United Mexican States on the Exchange of Tax Information art. 12, Oct. 1, 2009.

94. Iurie Lungu, *Germany-Mexico Tax Treaty Enters into Force*, 2009 WTD 209-8 (Nov. 2, 2009).

95. Koen van't Hek et al., *Pending Germany-Mexico Treaty Revises Rules for Corporate Taxpayers*, 2008 WTD 188-8 (Sept. 26, 2008).

96. John Venuti et al., *Current Status of U.S. Tax Treaties and International Tax Agreements*, 39 TM Int'l J. 33.

97. OECD, *Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard*, (Apr. 2, 2009), available at <http://www.oecd.org/dataoecd/38/14/42497950.pdf>.

enter into TIEAs and become more transparent.⁹⁸ Nonetheless, it has been reported that Panama's approach will be to sign tax treaties instead of TIEAs, which would imply more time to analyze and negotiate deals with counterparties.⁹⁹ In order to achieve that goal Panama has created a new commission to review tax matters.¹⁰⁰

IX. PARAGUAY

The tax treaty with China that was signed on April 24, 1994 has finally been ratified by the Paraguayan Senate on December 15, 2009.¹⁰¹ The agreement will enter into force once the internal ratification procedures of each contracting party have been finalized and the notifications between the parties completed.

X. PERU

During 2009, Peru entered into an income tax treaty with Brazil that will become effective January 1, 2010,¹⁰² which includes a tax information exchange provision that follows the OECD's Article 26 model convention. Peru has also a TIEA in place with the United States which entered into force on March 31, 1993.¹⁰³

XI. URUGUAY

The OECD's initial Progress Report listed Uruguay as a jurisdiction that has not committed to the internationally agreed tax standard.¹⁰⁴ This classification, however, remained in place solely for a brief period of time, given that the OECD shortly thereafter upgraded Uruguay to the "grey" list of jurisdictions which have committed to the internationally agreed tax standard, but have not yet substantially implemented them.¹⁰⁵ Uruguay's bank and tax secrecy laws have a long history and have ap-

98. Rossella Brevetti, *U.S. Trade Official Outlines Progress On Tax Transparency Talks With Panama*, 174 DTR I-(Sept. 11, 2009).

99. Luis Eduardo Ocando & Alfredo Apestegui, *Panama: On Track Towards International Fiscal Transparency*, 2009 WTD 185-1 (Sept. 28, 2009).

100. *Id.*

101. Iurie Lungu, *Paraguay Ratifies Tax Treaty With China*, 09 WTD 244-6, 20 (Dec. 23, 2009).

102. GUSTAVO LOPEZ-AMERI, *PERU: 2009 YEAR IN REVIEW*, 2009 WTD 245-17 (Dec. 24, 2009).

103. John Venuti et. al., *Current Status of U.S. Tax Treaties and International Tax Agreements*, 39 TM Int'l J. 33.

104. OECD, *Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard* (Apr. 2, 2009), available at <http://www.oecd.org/dataoecd/38/14/42497950.pdf>.

105. OECD, *Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard* (Dec. 23, 2009), available at <http://www.oecd.org/dataoecd/50/0/43606256.pdf>. See also OECD, *Four more countries commit to OECD tax standards* (Apr. 7, 2009), available at http://www.oecd.org/document/0/0,3343,en_2649_33767_42521280_1_1_1_1,00.html; OECD, *OECD welcomes Uruguay's commitment to OECD tax information exchange standards* (Apr. 3, 2009), available at http://www.oecd.org/document/25/0,3343,en_2649_33767_42509273_1_1_1_1,00.html.

pealed a lot of foreigners,¹⁰⁶ particularly Argentines that have historically used Uruguay's banks and companies as vehicles to hold investments.¹⁰⁷

In an effort to get to the threshold required by OECD (twelve agreements) to be considered a jurisdiction that has substantially committed to the agreed tax standards,¹⁰⁸ Uruguay signed double taxation treaties with Mexico on August 14 (which was approved by the Uruguayan Senate on December 16),¹⁰⁹ Spain on October 9,¹¹⁰ and Portugal on November 30,¹¹¹ which contain a tax exchange information clause that follows Article 26 of the OECD model convention.¹¹² In addition, an agreement with Germany is on its way given that Uruguay officials informed that a deal has been already agreed upon and solely needs to be signed by the parties.¹¹³

In addition, Uruguayan government officials expressed expectations to sign deals with Portugal, Andorra, Chile, China, France, Germany, India, Italy, Korea, and Monaco.¹¹⁴

XII. VENEZUELA

On January 1, 2009 the income tax treaty with Malaysia that was signed on August 28, 2006,¹¹⁵ will become effective.¹¹⁶ Article 27 of the treaty contains an exchange of information clause.¹¹⁷

In addition, the income tax treaty entered into with Belarus on December 8, 2007, entered into force on January 13, 2009, and it will be effective

106. Alberto Varela & Gianni Gutierrez, OECD Pressure and Bank Secrecy: The View From Uruguay 20-09 WTD 136-13 (July 20, 2009).

107. David Haskel, *Argentine Rulings Ban Stocks, Bonds Related to Nations Lacking Tax Treaties*, DAILY TAX REPORT, May 25, 2009, at 92 DTR I-4; Argentina, Bahamas Sign Tax Information Exchange Deal 232 DTR I-1 (Dec. 7, 2009).

108. OECD Progress Report, *supra* note 10.

109. Iurie Lungu, *Uruguay Ratifies Tax Treaty with Mexico*, 2009 WTD 242-8 (Dec. 21, 2009); Mexico, *Uruguay Sign Tax Treaty*, 2009 WTD 158-4 (Aug. 19, 2009).

110. David Haskel, *Argentina, Bahamas Sign Tax Information Exchange Deal*, 232 DTR I-1 (Dec. 7, 2009); Iurie Lungu, *Spain, Uruguay Sign Tax Agreement*, 2009 WTD 195-10 (Oct. 13, 2009).

111. David Haskel, *Uruguay Signs Tax Treaty with Portugal; Germany Pact, Several Others to Follow*, 235 DTR I-2 (Dec. 10, 2009).

112. David Haskel, *Uruguay Tax Pacts with Spain, Mexico Signal Change in Strategy, Officials Say*, 231 DTR I-1 (Dec. 4, 2009).

113. David Haskel, *Uruguay Signs Tax Treaty with Portugal; Germany Pact, Several Others to Follow*, 235 DTR I-2 (Dec. 10, 2009).

114. David Haskel, *Uruguay Tax Pacts with Spain, Mexico Signal Change in Strategy, Officials Say*, 231 DTR I-1 (Dec. 4, 2009).

115. Agreement Between the Government of Malaysia and the Government of the Bolivarian Republic of Venezuela for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Aug. 28, 2006.

116. Leopoldo Escobar & Ximena Lujan, *Venezuela, Malaysia Confirm Treaty's Entry Into Force*, 2009 WTD 174-6 (Sept. 11, 2009).

117. Agreement Between the Government of Malaysia and the Government of the Bolivarian Republic of Venezuela for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income art. 27, Aug. 28, 2006.

beginning on January 1, 2010.¹¹⁸ Article 27 of the treaty contains an exchange of information clause.¹¹⁹ Also, the income tax treaty with Russia signed on December 22, 2003, entered into force on January 19, 2009.¹²⁰

Lastly, the income tax treaty with Vietnam, signed on November 20, 2008, was ratified by President Hugo Chavez on May 20, 2009.¹²¹ The treaty contains an exchange of information provision on Article 27.¹²²

XIII. CONCLUSION

During 2009, there was considerable activity in the area of information exchange and international cooperation. Even though the focus has been mostly on the United States and Swiss banks, the increased pressure on transparency and global cooperation promoted by the OECD, the G-20 and the United States has prompted many Latin American countries to enter into more tax information exchange agreements or income tax treaties with exchange of information provisions. It appears that this tendency will continue 2010.

118. Antonio Marsicano, *Belarus-Venezuela Treaty Enters into Force*, 2009 WTD 22-7 (Feb. 5, 2009).

119. Agreement Between the Government of the Bolivarian Republic of Venezuela and the Government of the Republic of Belarus for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital art. 27, Dec. 8, 2007.

120. Leopoldo Escobar, *Russia-Venezuela Income Tax Treaty Enters into Force*, 2009 WTD 118-10 (June 23, 2009).

121. Iurie Lungu, *Venezuela Ratifies tax Treaty With Vietnam*, 2009 WTD 102-10 (June 1, 2009).

122. Agreement Between the Government of the Bolivarian Republic of Venezuela and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income art. 27, Nov. 20, 2008.